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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
OAKLAND

Frederick (Ric) Schiff; Glenn Brakel; Alice  
Dicroce; Joseph Emanuel; Brian Greer; Clayton  
Harmston; Steven Haskell; Micah Hope; Daniel  
Kelly; Alexander Lentz; Brandon McKelley;  
Gerald Newbeck; David O'Keeffe; Christopher  
Ritter; Steven Uang and Thomas Walsh,

Plaintiff,

v.

City and County of San Francisco; Greg Suhr,  
individually; William (Bill) Scott, individually; and  
DOES 1-20,

Defendants.

Case No. 4:19-cv-03260-YGR

**Plaintiffs' Statement of Undisputed Material  
Facts in Support of Plaintiffs' Opposition to  
Defendants' Motion for Summary Judgment or,  
in the alternative, Partial Summary Judgment**

Hearing Date: July 26, 2022

Time: 2:00 p.m.

Place: Courtroom 1, 4<sup>th</sup> Floor

Judge: Hon. Yvonne Gonzalez Rogers

Date Action Filed: June 11, 2019

Date FAC Filed: June 26, 2019

Date TAC Filed: April 28, 2020

Trial Date: TBD

Plaintiffs hereby submit their Separate Statement of Undisputed Material Facts in Support of Plaintiffs'  
Opposition to Defendants' Motion for Summary Judgment or in the Alternative, Partial Summary Judgment.

Issue No.	Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
Issue 1 (Plaintiffs Race and Gender)	<p><b>Fact 1.</b> Plaintiffs Frederick Schiff, Glenn Brakel, Joseph Emanuel, Brian Greer, Clayton Harmston, Steven Haskell, Daniel Kelly, Alexander Lentz, Brandon McKelley, Gerald Newbeck, David O'Keeffe, and Thomas Walsh each identify as "white" – referenced herein as Caucasian-American – and male.</p> <p>(Third Amended Complaint ["TAC"], ¶¶ 9-10, 12-22, 24; <i>see also</i> Declaration of Peter A. Cownan ["Cownan Decl.,"], Ex. 52 [Emanuel Tr.] at 82:2-4, Ex. 57 [McKelley Tr.] at 29:18-20, Ex. 50 [Brakel Tr.] at 35:8-14, Ex. 54 [Haskell Tr.] at 46:14-20, Ex. 58 [Newbeck Tr.] at 81:8-9; <i>see also</i> Declaration of Jennifer Lo ["Lo Decl.,"], Exs. A-C.)</p>	<p><b>Undisputed</b> except for plaintiff Emanuel who changed his identification from "white" to "other" between the 2018 and 2019 Sergeant promotional rounds.</p> <p>(Mullanax Decl., Ex.P. 81:24-25, 82:1-25, 83:1-25, 84: 1-22)</p>
Issue 1	<p><b>Fact 2.</b> Plaintiff Steven Ung identifies as "Asian" – referenced herein as Asian-American – and male.</p> <p>(Complaint, ¶ 23; Cownan Decl., Ex. 63 [Ung Tr.] at 73:8-12; <i>see also</i> Lo Decl., Ex. A.)</p>	<p><b>Undisputed.</b></p>
Issue 2 (Plaintiffs Cannot Establish a Disparate Treatment Case)	<p><b>Fact 3.</b> Plaintiffs' discovery responses reveal they are not contending the City or Chief Scott harbored discriminatory animus against them as a result of their race or gender, and implicitly admit they have no evidence in support of such an allegation.</p> <p>(Cownan Decl., Ex. 66 [Ps' Responses to SROGS-Set Two], 2:1-10.)</p>	<p><b>Disputed.</b> Plaintiffs responded with a qualified answer: "Plaintiffs do not contend that defendants harbored racial 'animus' against plaintiffs, <i>under the common definition of 'animus' as 'strong dislike or enmity'.</i>"</p>

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Issue 2	<p><b>Fact 4.</b> Plaintiffs allege the City and Chief Scott acted improperly when choosing to promote their colleagues to leadership roles despite the fact that some of the Plaintiffs had earned higher test scores on the underlying civil service examination.</p> <p>(Cowan Decl., Ex. 37 [Brakel Responses to SROGS-Set One], 1:27-2:10, 2:12-28; Ex. 38 [Emanuel Responses to SROGS-Set One], 1:26-2:28; Ex. 39 [Greer Responses to SROGS-Set One], 1:27-4:25; Ex. 40 [Harmston Responses to SROGS-Set One], 2:2-25; Ex. 41 [Haskell Responses to SROGS-Set One], 1:27-3:16; Ex. 42 [Kelly Responses to SROGS-Set One], 1:27-2:19; Ex. 43 [Lentz Responses to SROGS-Set One], 1:27-2:23; Ex. 44 [McKelly Responses to SROGS-Set One], 2:1-9:28; Ex. 58 [Newbeck Tr.], 90:21-91:12, 97:10-14; Ex. 46 [O'Keeffe Responses to SROGS-Set One], 1:2-2:22; Ex. 47 [Schiff Responses to SROGS-Set One], 1:27-2:20; Ex. 48 [Uang Responses to SROGS-Set One], 1:27-2:24; Ex. 49 [Walsh Responses to SROGS-Set One], 1:27-3:4.)</p>	Undisputed.
Issue 2	<p><b>Fact 5.</b> Defendants did not rely upon Plaintiffs' race or gender, or the race or gender of any other candidate, when making promotion decisions.</p> <p>--Plaintiffs generally agree they have no recollection of submitting their race or gender as part of the promotion process, nor information that others did so.</p> <p>(Cowan Decl., Ex. 50 [Brakel Tr.] at 27:14-28:4; Ex. 51 [Emanuel Tr.] at 58:17-25, 59:6-9; Ex. 52 [Greer Tr.] at 29:11-30:2; Ex. 53 [Harmston Tr.] at 45:3-11, 45:18-23; Ex. 54 [Haskell Tr.] 45:9-25; Ex. 55 [Kelly Tr.] at 25:25-26:1; Ex. 56 [Lentz Tr.] at 36:11-20; Ex. 57 [McKelley Tr.] at 26:8-29:14; Ex. 58 [Newbeck Tr.] at 69:20-71:3; Ex. 59 [O'Keeffe Tr.] at 41:1-11; Ex. 60 [Schiff Tr.] at 105:13-19; <i>but see</i> Ex. 64 [Walsh Tr.] at 50:24-52:5</p> <p>-- Before making final promotion decisions, the Chief reviews the written recommendations of candidates provided by his Assistant and Deputy Chiefs; a summary of the finalists'</p>	<p><b>Disputed.</b></p> <p>On November 16, 2017, SFPD Chief Scott appeared at the SFPOA general membership meeting. When asked about the promotional process, Chief Scott said he uses race and gender when making promotional decisions. Witnesses were in disbelief.</p> <p>(Mullanax Decl., <b>Ex. E [Andreotti Tr.]</b> at 7:21-25, 8:1-6, 13:18-25, 14:1-14; <b>Ex. E-1 [SFPOA Minutes]</b> at 2; <b>Ex. G [Harmston Tr.]</b> at 71:13-25, 72:1-2, 76:24-25, 77:1-25, 78:1-3; <b>Ex. J [Montoya Tr.]</b> at 13:7-22, 14:3-25, 15:6-25, 17:8-17; <b>Ex. N [Schiff Tr.]</b> at 165:1-19, 166:3-11, 20-23)</p> <p>Undisputed.</p>

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	<p>secondary criteria information, training, and disciplinary record; and may speak with his Assistant Chiefs/Chief of Staff. (Cowan Decl., Ex. 61 [Scott Tr., Vol 1] at 24:25-26:14, 27:15-19, 29:3-23.)</p> <p>-- The Chief exercises his discretion to select finalists whom he thinks would best suit SFPD; he has no set formula for how he makes final decisions, but rather reviews and evaluates each candidate as an individual. (See Cowan Decl., Ex. 62 [Scott Tr., Vol 2] at 97:8-12, 98:1-16, 117:13-118:3; Exs. 34-36 [Notice letter sent to finalists]; Ex. 63 [Uang Tr.] at 47:1-10; <i>see also</i> Ex. 60 [Schiff Tr.] at 115:25-116:10, Depo Ex. 7.)</p> <p>--Defendants do not have diversity quotas. (Cowan Decl., Ex. 61 [Scott Tr.] at 76:4-21.)</p>	<p><b>Disputed</b> as to Chief Scott's admission in November 2017 that he used race and gender when making promotional decisions. (Mullanax Decl., Ex. E [Andreotti Tr.] at 7:21-25, 8:1-6, 13:18-25, 14:1-14; Ex. E-1 [SFPOA Minutes] at 2; Ex. G [Harmston Tr.] at 71:13-25, 72:1-2, 76:24-25, 77:1-25, 78:1-3; Ex. J [Montoya Tr.] at 13:7-22, 14:3-25, 15:6-25, 17:8-17; Ex. N [Schiff Tr.] at 165:1-19, 166:3-11, 20-23)</p>
Issue 2	<p><b>Fact 6.</b> Defendants promoted Caucasian-Americans and Asian-Americans males during each of the relevant promotion rounds at issue, and sometimes before eligible African-American or female finalists who had received higher scores on the underlying civil service exam.</p>	<p><b>Disputed.</b></p> <p>There are very few instances of a higher-scoring African American or female candidate being passed over for promotion by a lower scoring white male candidate.</p> <p>In the four rounds of <b>Captain</b> promotions, there is not one instance of a lower scoring white male being promoted over a higher scoring African American. Further, there is not one instance when a lower scoring white male was promoted over a higher scoring female. All eight females were promoted, with only one scoring higher than Schiff at Rank 12. (Mullanax Decl., Ex. C [Q-80 <b>Captain List</b>]. Cowan Decl., Ex. 24, 27, 30, 33 [<b>Captain Promotional Announcements</b>])</p> <p>In the three <b>Lieutenant</b> rounds, promotions came from Ranks 1-62. Every eligible African American candidate in that range were promoted, except a male at Rank 56. A male at Rank 34 was disqualified.</p>

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	<p>--During the 2016 Captain round, SFPD promoted twelve finalists to Captain, including four Caucasian-American males (John M. Hart, Nicholas Rainsford, Richard W. Struckman, and Peter D. Walsh) and three Asian-American males (Daryl S. Fong, Gregory L. Mar, and Paul Y. Yep). (Cownan Decl., Ex. 24 [2016 Captain Promotion List]; Lo Decl. at Ex. C)</p>	<p>A white male at Rank 58 was promoted. This is the only instance in the Lieutenant promotions where a white male was promoted over a higher scoring African American. A majority of those not promoted from the Ranks 1-62 were white and Asian males. There were only 4 females not promoted, 3 were white and 1 was Hispanic. (Mullanax Decl., Ex. B [Q-60 Lieutenant List], Cownan Decl., Ex. 27, 30, 33 [Lieutenant Promotional Announcements])</p> <p>In the three <b>Sergeant</b> rounds, promotions were made from Ranks 1-138. There was only 1 African American who was not promoted (Rank 121). (An African American at Rank 84 was not eligible because he did submit secondary criteria.) There were only 3 females who were not promoted (Ranks 99, 119, 136). There were only two instances in which a lower scoring white male (Ranks 122, 130) was promoted over a higher scoring African American (Rank 121). (Mullanax Decl., Ex A [Q-50 Sergeant List], Cownan Decl., Ex. 4, 7, 11 [Sergeant Promotional Announcements].)</p> <p><b>Undisputed but misleading.</b> Plaintiffs are not litigating over the 2016 Captain promotional round and have dismissed former SFPD Chief Suhr from the lawsuit. (ECF No. 72, ECF No. 75). Defendants' contention is misleading because the white males cited ranked higher than Schiff as were 2 of the promoted Asian males. However, it did affect Schiff's promotion later as Chief Scott moved down to Rank 16 (white female) and Rank 21 (African American male). (Mullanax Decl., Ex. C [Q-80 Captain List], Cownan Decl., Ex. 24 [2016 Captain Promotion List])</p>

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	<p>-- During the 2017 Captain round, SFPD promoted nine finalists to Captain, including three Caucasian-American males (Joseph Engler, Carl Fabbri, and Gaetano Caltagirone) and two Asian-American males (Robert Yick and Dominic Yin). (Cownan Decl., Ex. 27; Lo Decl. at Ex. C.)</p>	<p><b>Undisputed but misleading.</b> Two of the three promoted white males were at the same rank or higher than Schiff (Rank 12). Asian males Yick was higher (Rank 11) and Yin was lower (Rank 13). Five of the promotions were at ranks 13 (Asian male), 19 (white female), 20 (African American female), 23 (white male) and 25 (African American female). (Mullanax Decl. <b>Ex. C [Q-80 Captain List]</b>, Cownan Decl., <b>Ex. 27 [2017 Captain Promotion List]</b>)</p>
	<p>-- During the 2018 Captain Round, SFPD promoted six finalists to Captain, including one Caucasian-American male (Edward Del Carlo) and one Asian-American male (Sergio Chin). (Cownan Decl., Ex. 30; Lo Decl. at Ex. C.)</p>	<p><b>Undisputed but misleading.</b> All promotions in the 2018 Round were from ranks below Schiff (Rank 12). Ranks promoted were: 14 (African American male), 15 (white female), 16 (Hispanic male), 30 (white female), 31 (white male) and 36 (Asian male). (Mullanax Decl. <b>Ex. C [Q-80 Captain List]</b>, Cownan Decl., <b>Ex. 30 [2018 Captain Promotion List]</b>)</p>
	<p>--During the 2017 Lieutenant round, SFPD promoted thirty finalists to Lieutenant, including eleven Caucasian-American males (Michael McEachern, Peter Hamilton, Sean Frost, Eric Altorfer, Scott Biggs, Anthony Ravano, Robert Kobold, Thomas Harvey, Keith Pasquinzo, Christopher Del Gandio, and Christopher Canning) and three Asian-American males (Derrick Lew, Tadao Yamaguchi, and Peter Shields). (Cownan Decl., Ex. 15; Lo Decl., Ex. B.)</p>	<p>Plaintiffs ranked: <b>Greer 17, Walsh 18, Harmston 19, Newbeck 27, Haskell 41</b>. Six candidates between Ranks 19 and 27 were promoted. (2 Asian males, 1 Filipino male, 1 white male, 3 Hispanic females, 2 Hispanic males, 3 African American males &amp; 3 white females) Eight candidates below Rank 27 were promoted.</p>
	<p>-- During the 2018 Lieutenant round, SFPD promoted fifteen finalists to Lieutenant, including ten Caucasian-American males (Michael Koniaris, Douglas Farmer, Damon Keeve, Hratch Sonny Sarkissian, Gerald Newbeck, Christopher Wilhelm, Malcolm</p>	<p>Plaintiff Newbeck was promoted. Twelve candidates below Rank 19 were promoted. (One white female, one Black female, three Hispanic males &amp; seven white males)</p>



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	<p>Anderson, Timothy O'Connor, Stephen Jonas, and Feliks Gasanyan). (Cowan Decl., Ex. 18; Lo Decl., Ex. B.)</p> <p>-- During the 2019 Lieutenant round, SFPD promoted twenty-one finalists to Lieutenant, including eleven Caucasian-American males (Brian Greer, Thomas Walsh, Clayton Harmston, William Toomey, Andrew Meehan, Patrick McCormick, Kevin Healy, Anthony Damato, Mark Moreno, Tracy Boes, and Thomas Maguire) and two Asian-American males (Kevin Lee and David Do). (Cowan Decl., Ex. 22; Lo Decl., Ex. B.)</p> <p>-- During the 2017 Sergeant round, SFPD promoted eighty-five finalists to Sergeant, including twenty-one Caucasian-American males (Adam Shaw, Pavel Khmarskiy, Ryan Daugherty, Martin Kilgariff, James Tacchini, Nicholas Buckley, Paul Ospital, Kevin Brugaletta, Brendan Caraway, Kevin Adams, Matthew Hackard, Gregory Skaug, Christopher Smith, Tobius Moore, Herman H. G. Luedtke, Ryan Hart, Brent Bradford, Timothy Faye, John Murphy, Graig Wells, Craig Tiffe) and seven Asian-American males (Edmund Huang, Jeffrey Chow, Aaron Yoo, Daniel Chui, Lawrence Ng, Leo Bernstein, and Terence Saw). (Cowan Decl., Ex. 4; Lo Decl., Ex. A.)</p> <p>-- During the 2018 Sergeant round, SFPD promoted forty-five finalists to Sergeant, including twenty-eight Caucasian-American males (Frank Pereira, John Cunnie, John Hallisy, Michael Mellone, Joseph Clark, Daniel Kroos, Hamdy Habib, Nicholas Hillard, Christopher Galligan, Mark Mitchinson, Raymond Kane, Kevin Nestor, Michael Horan, Jonathon Lucchetti, Brain Kelly, Kyle Wren, Patrick Faye, Joseph Lynch, Brian Neill, Daniel Burns, Ryan Jones, Pete Schlegle, Edward Zeltser, James O'Meara III, Eric Letsch, Michael Palma, Brian Kneueker, and Allen Mulliken) and one Asian-American males (Ramonik Johal). (Cowan Decl., Ex. 7; Lo Decl., Ex. A.)</p>	<p>Plaintiffs Greer, Walsh and Harmston were promoted. Plaintiff Haskell (Rank 41) was not promoted while promotions went down to Rank 63 and there were 33 candidates between Haskell and Rank 63. (Mullanax Decl., Ex B [Lt. List])</p> <p><b>Disputed.</b> SFPD promoted 76 candidates to Sergeant in the 2017 promotional round. Promotions ranged from Rank 1 to Rank 80. In that range, <b>49 white males were skipped</b>, 3 Asian Americans were skipped, and 8 Filipino males were skipped.</p> <p>No Black candidates were skipped. Only one female candidate was skipped. (Mullanax Decl., <b>Ex. A [Q-50 Sergeant List]</b>; Cowan Dec., <b>Ex. 4 [Sergeant Promotional Announcement]</b>)</p> <p>The 2018 Sergeant promotions ranged from Rank 20 to Rank 90. In that range, 34 candidates were skipped. Of that number, <b>25 white males were skipped</b>, 3 Filipino males were skipped, 4 Hispanic males were skipped, 1 Asian male was skipped, and no eligible African American males were skipped. <b>No females were skipped.</b> (Mullanax Decl., <b>Ex. A [Q-50 Sergeant List]</b>; Cowan Dec., <b>Ex. 7 [Sergeant Promotional Announcement]</b>)</p>

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	<p>-- During the 2019 Sergeant round, SFPD promoted sixty-six finalists to Sergeant, including thirty-five Caucasian-American males (Mark Fraize, Brandon McKelley, Alexander Lentz, Patrick Dudy, Michael Bushnell, Joseph Emanuel, David Radford, Jeremy Cummings, Daniel Kelly, David O'Keeffe, Christopher Costa, Glenn Brakel, Phillip Haymond, Ryan Crockett, Robert McMillan, Bret McManigal, Michael Tursi, Brent Sullivan, Mark Milligan, Brian Hopkins, Daniel Taft, Brian Burke, Kenneth Bates, Joshua Nazzal, Tomothy Neves, Theodore Polovina, Kenneth Gallo, Gregory Latus, Scott Luttiken, David Johnson, Jassen Dongon, Bryan Campbell, William Elieff, Richard Cibotti, and Tom Hauscarriague) and eight Asian-American males (Jarrod Yee, Yossef Azim, Justin Woo, Eric Pan, Gary Cheng, Matthew Leong, Ramesh Shangaran, and Craig Leong).</p> <p>(Cowan Decl., Ex. 11; Lo Decl., Ex. A.)</p>	<p>The 2019 Sergeant promotions ranged from Rank 17 to Rank 138. Plaintiffs McKelley (35), Lentz (37), Emanuel (48), Kelly (56), O'Keeffe (57) &amp; Brakel (60) were promoted. Plaintiff Uang (56) was not promoted.</p> <p>The three rounds of Sergeant promotions went from Rank 1 to Rank 138. Of these promotions,</p>
Issue 2	<p><b>Fact 7.</b> African-American and female finalists were not chosen for promotion during each of the relevant promotion rounds at issue.</p> <p>-- During the 2016 Captain round, SFPD chose not to promote at least two eligible African-American male finalists (Steven Ford and Troy Dangerfield) and at least three eligible female finalists (Renee Pagano, Michelle Jean, and Milanda Moore) during the 2016 Captain round. (Cowan Decl., Exs. 23- 24; Lo Decl. at Ex. C; Icbn Decl., at ¶ 10; <i>see also</i> Cowan Decl, Ex. 60 [Schiff Tr.] at 109:20-3.)</p>	Undisputed.



Issue No.	Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
	<p>-- Though eligible for promotion during the 2017 Captain round, SFPD chose not to promote at least three eligible African-American male finalists (Troy Dangerfield, Juan Daniels, and Cornelius Johnson) and at least one eligible female finalist (Renee Pagano) during this 2017 round. (Cowan Decl., Exs. 23, 27; Lo Decl. at Ex. C; Icbn Decl., at ¶ 11.)</p>	<p>Undisputed but misleading. Plaintiff Schiff (Rank 12) was waiting for promotion this round. There were eighteen eligible candidates in these ranks. Schiff was passed over. Those lower scoring promoted candidates consisted of one Asian male (Rank 13), two African American females (Ranks 20 &amp; 25), and one white female (Rank 19). (Mullanax Decl., Ex. C).</p>
	<p>-- Though eligible for promotion during the 2018 Captain round, SFPD chose not to promote at least three eligible African-American male finalists (Juan Daniels, Cornelius Johnson, and Julian Hill) and at least one eligible female finalist (Trenia Wearing). (Cowan Decl., Exs. 23, 30; Lo Decl. at Ex. C; Icbn Decl., at ¶ 12.)</p>	<p>Undisputed, but: Schiff was passed over again. The lower scoring candidates who were promoted included an African American male (Rank 14), a white female (Rank 15), an Hispanic male (Rank 16), a white female (Rank 30), a white male (Rank 31) and an Asian male (Rank 36). (Mullanax Decl., Ex. C).</p>
	<p>-- Though eligible for promotion during the 2017 Lieutenant round, SFPD chose not to promote at least two eligible African-American finalists (Bernadette Robinson and Robert Walker Jr.) and at least three eligible female finalists (Stephanie Long, Alice DiCroce, and Bernadette Robinson). (Cowan Decl., Exs. 12, 15; Lo Decl., Ex. B; Icbn Decl., at ¶ 7.)</p>	<p>All eligible African Americans in the range were promoted, except for one African American female. Nine females were promoted and three were not promoted. Eighteen males were not promoted, and fourteen were white. (Mullanax Decl., Ex. B)</p>
	<p>-- Though eligible for promotion during the 2018 Lieutenant round, SFPD chose not to promote at least one eligible African-American finalist (Robert Walker Jr.) and at least one eligible female finalists (Alice DiCroce). (Cowan Decl., Exs. 12, 18; Lo Decl., Ex. B; Icbn Decl., at ¶ 8.)</p>	<p>In the 2018 Lieutenant promotional round, promotions were made from Rank 12 – Rank 44. There were twenty-six candidates eligible for promotion in these ranks. The remaining females in Ranks 1-44 were all promoted, as well as all African Americans. (Mullanax Decl., Ex. B)</p>
	<p>-- Though eligible for promotion during the 2019 Lieutenant round, SFPD chose not to promote at least two eligible African-American finalists (Robert Walker Jr. and Bassey Obot) and at least three eligible female finalists (Maureen Leonard, Josephine Borges, and Danielle Newman).</p>	<p>Disputed. Robert Walker was not eligible for promotion due to discipline. Plaintiff Haskell at Rank 41 was passed over again. (Mullanax Decl., Ex. B)</p>

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	<p>(Cowan Decl., Ex. 22; Lo Decl., Ex. B; Icban Decl., at ¶ 9.)</p> <p>-- Though eligible for promotion during the 2017 Sergeant round, SFPD chose not to promote eligible African-American finalists (Warrick Whitfield, Todd Burks, and Stephon Degand) and eligible female finalists (Barbara Dullea, Angelique Marin, Diane Khuu, Giselle Linnane, Sondra Reynolds, and Alexandra Medina).</p> <p>(Cowan Decl., Ex. 4; Lo Decl., Ex. A.; Icban Decl., ¶ 4)</p> <p>-- Though eligible for promotion during the 2018 Sergeant round, SFPD again did not promote an eligible African-American finalist (Warrick Whitfield) and an eligible female finalist (Diane Khuu).</p> <p>(Cowan Decl., Ex. 7; Lo Decl., Ex. A.; Icban Decl., ¶ 5.)</p>	<p><b>Disputed.</b> Warrick Whitfield did not submit his secondary criteria and was not eligible. In the 2017 Sergeant promotional round, promotions were made from Rank 1 -Rank 80. There were 76 total candidates promoted. (Cowan Decl., Ex. 4). There was a total of 140 candidates in Rank 1 – Rank 80. Every African American in that range was promoted. Twenty-one females in that range were promoted while only two were not promoted. Meanwhile, sixty-three males in that range were not promoted. Of those, forty-nine were white males. The lowest ten ranks that were promoted included five Asian females, three African American males, one Filipino male and only one white male. (Mullanax Decl., Ex. A).</p> <p><b>Disputed,</b> Whitfield was not eligible for promotion because he did submit his secondary criteria. (Cowan Decl., Ex. 2) There were total of 78 candidates in Rank 20- Rank 90. (One black male candidate at Rank 84 was not eligible for promotion.) (Mullanax Decl., Ex. A). Those that were skipped included 25 white males, three Filipino males, one Asian male, and four Hispanic males. Five females were promoted, meaning that all females in the Rank 1 – Rank 90 range covering the first two rounds of promotions were promoted. All three remaining eligible African American candidates in that range were all promoted. (Mullanax Decl., Ex. A)</p>

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	-- Though eligible for promotion during this 2019 round, SFPD chose not to promote two eligible African-American finalists (Warrick Whitfield and Jerry King) and four eligible female finalists (Diane Khuu, Tiffany Gunter, Rosalyn Check, and Nicole Ramirez). (Cowan Decl., Ex. 11; Lo Decl., Ex. A; Icban Decl., ¶ 6.)	<b>Disputed.</b> Whitfield was not eligible for promotion because he did submit his secondary criteria. (Cowan Decl., Ex. 2) The promotions were made from Rank 17 – Rank 138. Of those not promoted in this round, fifty-nine were males. Only one eligible African American male was not promoted. Twenty-eight white males were not promoted (one at Rank 63 pulled out). Seven Asian males were not promoted. Nine Filipino males were not promoted. Fifteen Hispanic males were not promoted. (Mullanax Decl., Ex. A).
Issue 3 (Defendants have legitimate reasons for relying upon secondary criteria)	<b>Fact 8.</b> The review of secondary criteria when making law enforcement promotion decisions is justified.  (Cowan Decl., Ex. 65 at ¶¶ 4-5, 23; Ex. 61 [Scott Tr., Vol 1] at 56:16-58:15; Ex. 50 [Brakel Tr.] at 22:9-23:11; Ex. 51 [Emanuel Tr.] at 53:15-56:7; Ex. 53 [Harmston Tr.] at 35:11-36:1; Ex. 55 [Kelly Tr.] at 23:6-16, 23:21-24:8; Ex. 56 [Lentz Tr.] at 29:15-30:25; Ex. 57 [McKelley Tr.] at 23:22-24:12; Ex. 58 [Newbeck Tr.] at 66:10-68:6; Ex. 60 [Schiff Tr.] at 92:6-12; Ex. 63 [Uang Tr.] at 48:19-49:8.)	Undisputed.
Issue 4 (Plaintiffs harms were not caused by the City pursuant to <i>Monell</i> )	<b>Fact 9.</b> The Rule of Ten Scores is not the same as the prior practice of “banding” referenced in the TAC.  (TAC at ¶ 34; Cowan Decl., Ex. 66 [Ps' Responses to SROGS-Set Two], 2:11-17, 2:16-21.)	Undisputed.
Issue 4	<b>Fact 10.</b> The subject promotion decisions were made by Chief Suhr and Chief Scott.  (Cowan Decl., Exs. 4, 7, 11, 15, 18, 22, 24, 27, 30, 33.)	Undisputed.

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Issue 4	<b>Fact 11.</b> There is no evidence that the City delegated policy making authority or specifically ratified any alleged illegal action by the Chiefs.	Disputed. The City ratified Chief Scott's conduct by certifying his promotional lists after he admitted using race and gender when making promotional decisions.

"I attest that the evidence cited herein fairly and accurately disputes the facts as asserted."

Dated: June 17, 2022

LAW OFFICE OF M. GREG MULLANAX

By: /s/ M. Greg Mullanax

M. Greg Mullanax  
Attorney for Plaintiffs,  
Ric Schiff, *et. al.*